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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,673	09/05/2003	Amos Nussinovitch	85189-5100	2188
28765 7590 07/31/2007 WINSTON & STRAWN LLP PATENT DEPARTMENT 1700 K STREET, N.W. WASHINGTON, DC 20006				
			EXAMINER NAFF, DAVID M.	
			ART UNIT 1657	PAPER NUMBER
			MAIL DATE 07/31/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	10/657,673	NUSSINOVITCH ET AL.	
	Examiner	Art Unit	
	David M. Naff	1657	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☒ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: None.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,2,4-16,18-21 and 41-43.  
Claim(s) withdrawn from consideration: 22-40.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.



David M. Naff  
Primary Examiner  
Art Unit: 1657

Continuation of 3. NOTE: (a) Amending claim 1 to require a desired porosity of "about 87 +/-SD 1.5% to about 94 +/-SD 0.1% raises new issues that would require further consideration and/or search.

(b) The above amendment to claim 1 raises the issue of new matter. The porosity disclosed in the specification (page 20, lines 4-6) is describing specific beads containing specific components, and does not support any beads within the scope of the present claims having the porosity described for the specific beads.

Continuation of 11. does NOT place the application in condition for allowance because: The arguments traversing the 35 USC 103 rejection are directed to the claims of the non-entered amendment. Since the amendment has not been entered, the arguments are moot. Even if the amendment had been entered, freeze drying the pellets of Marosi et al in the presence of a cryoprotectant as suggested by Sudoma will inherently result in beads having a porosity, and being capable of retaining activity as claimed. Sudoma clearly discloses freeze-drying in the presence of a cryoprotectant to provide a storage stable bacteria, and does not suggest only storing without refrigeration as asserted in the amendment. Furthermore, the microorganism activity maintained as recited in claim 1 is that capable of being maintained if the beads are stored for the specified time and temperature recited in the claim. The claim does not require a positive step of storing the beads for 12-36 months at -180C and maintaining an activity of not less than 50-95% during the storage. The cryoprotectant of Sudoma would have been expected to protect and maintain the activity of bacteria in a hydrocolloid gel during freeze-drying and storage similar to when the bacteria are not in the gel. None of the present claims require glycerol, which the amendment asserts Sudoma does not disclose.